

1.4 **Citations Discussed.** WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Rainwater v. School for the Deaf, PAB No. D89-004 (1989); Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

II. FINDINGS OF FACT

2.1 Appellant Darin Stone was a Correctional Officer (CO) 2 and a permanent employee of Respondent Department of Corrections (DOC) at the Washington Corrections Center for Women (WCCW). Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on December 31, 2001.

2.2 By letter dated December 13, 2001, Belinda Stewart, Superintendent of WCCW, notified Appellant of his dismissal, effective December 29, 2001. Ms. Stewart charged Appellant with neglect of duty, gross misconduct and willful violation of published employing agency or department of personnel rules or regulations. Ms. Stewart alleged that Appellant gave cigarettes to inmates; engaged in a personal relationship with inmate Ryan; gave inmate Ryan a bottle of "Red Door" perfume, three packages of Tarot cards, and a gold tone charm; wrote her letters personally and greeting cards; gave inmate Carver food from McDonalds; and engaged in conversations of a personal nature with inmates.

2.3 WCCW policies and expectations address staff relationships with inmates. Staff are prohibited from showing favoritism to offenders, from engaging in personal communications or relationships with offenders, and from giving gifts to offenders. Staff are required to be impartial to

1 offenders and to serve offenders with appropriate concern for their welfare and with no purpose of
2 personal gain. Staff are prohibited from bringing contraband into the institution.

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4 2.4 Appellant began employment with DOC in November 1997. He began employment at
5 WCCW in June 1999. Appellant was aware of WCCW's policies and expectations and of his duty
6 to abide by agency policies and procedures. Appellant had a history of corrective actions including
7 a July 18, 2001, memorandum of counseling for allowing inmate Ryan to work, without prior
8 written authorization, in the clinic where he was on duty.

9
10 2.5 Appellant worked the graveyard shift. He was assigned to work in the clinic and to perform
11 Response and Movement (R&M) duties throughout the institution. Inmate Ryan worked in the
12 clinic performing janitorial duties during the graveyard shift. Appellant knew inmate Ryan from
13 her work in the clinic and from his work as an R&M officer.

14
15 2.6 As an R&M officer, Appellant took inmates, including inmate Ryan, on smoking breaks.
16 Appellant admits that he gave inmate Ryan a cigarette on two occasions. He also admits that on
17 one occasion, he shared coffee from his personal thermos with inmate Ryan and inmate Quezada
18 while they were working in the clinic.

19
20 2.7 While Appellant admits that he gave cigarettes to inmates, he denies the remaining
21 allegations against him. Furthermore, Inmate Ryan denies having a personal relationship with
22 Appellant. We have carefully weighed the testimony of the witnesses and reviewed the
23 documentary evidence in this case. We find that with the exception of Appellant and inmate Ryan,
24 the witnesses in this case have no motive to fabricate their versions of events; therefore we find
25 their testimony credible. On the other hand, Appellant and inmate Ryan have reason to fabricate

1 their stories and their stories have been inconsistent and contradictory. As a result, we find that
2 more likely than not the follow events occurred.

3
4 2.8 On June 11 and 12, 2001, Appellant was assigned to escort inmate Carver to Saint Joseph's
5 Hospital. CO Juliana Harvell was also assisting with the escort. CO Harvell credibly testified that
6 while at the hospital on June 11, Appellant gave Carver a cigarette to smoke. In addition, Appellant
7 gave Carver a candy bar that he had purchased for his personal consumption and food he purchased
8 from McDonalds fast food restaurant.

9
10 2.9 Inmates Ryan, Bales, and Walker were friends. Inmate Ryan told Bales and Walker that she
11 and Appellant had a personal relationship that included hugging, kissing and oral sex, and that he
12 gave her gifts, including "Red Door" perfume, a gold charm, personal cards, notes and letters, and
13 three packages of Tarot cards. Ryan also told inmates Carver and Berry about her relationship with
14 Appellant.

15
16 2.10 July 14, 2001, was Ryan's scheduled day off from the clinic. However, Appellant allowed
17 her to work even though she did not have prior written permission to do so. Subsequently, Ryan
18 was placed in segregation. On July 18, 2001, Appellant received a memorandum of counseling for
19 allowing Ryan to work in the clinic on a night that she was not scheduled to work. Appellant did
20 not file a grievance about the counseling memorandum. Instead, on his personal time after his
21 regularly scheduled work shift, Appellant went to segregation on two separate occasions to obtain a
22 witness statement from Ryan.

23
24 2.11 CO Keisha Channel was aware of rumors that Appellant and Ryan had a personal
25 relationship. CO Channel personally observed Appellant frequently interacting with Ryan and
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1 taking her out on smoking breaks. In addition, she observed him take other inmates out for
2 smoking breaks. On July 29, 2001, CO Channel warned Appellant about the rumors. Appellant
3 seemed surprised to hear about the rumors, but CO Channel continued to believe that there was
4 something "weird" about Appellant's interactions with Ryan. On July 30, 2001, CO Channel wrote
5 an incident report about the interactions she observed between Appellant and Ryan.

6
7 2.12 Ryan and inmate Berry were roommates. Inmate Berry knew that relationships between
8 inmates and staff were prohibited. Inmate Ryan told inmate Berry that she and Appellant had a
9 personal relationship, that she was in love with Appellant, and that he would help raise Ryan's
10 daughter if she wanted him to. When Ryan was placed in segregation, she asked Berry to hold
11 contraband for her, but Berry refused. Ryan then asked inmate Bales to hold the contraband, which
12 she did. Subsequently, Berry reported to Correctional Unit Supervisor Daniel Fitzpatrick that
13 Appellant and inmate Ryan were having a relationship.

14
15 2.13 Superintendent Stewart was informed of the allegations against Appellant. She instructed
16 Chief Investigator Steven Baxter to conduct an initial fact finding investigation.

17
18 2.14 Mr. Baxter interviewed inmate Berry and other inmates as their names were disclosed. In
19 addition, on August 30, 2001, he conducted a search of Bales' cell. The search produced the bottle
20 of "Red Door" perfume believed to belong to Ryan. The perfume was considered contraband
21 because it was not available through the institution store. Inmate Bales was interviewed on August
22 31, 2001, and she confirmed that the contraband belonged to Ryan.

23
24 2.15 When Mr. Baxter asked Bales whether Appellant and Ryan had a personal relationship, she
25 refused to discuss it until she had an opportunity to talk to inmate Walker. Bales and Walker

1 thought that Appellant and Ryan would tell the truth about their relationship if they asked them to.
2 Therefore, they wrote a letter to Appellant and a letter to Ryan asking them to do the right thing.
3 On September 2, 2001, after hearing that Appellant and Ryan had denied having a personal
4 relationship, Bales and Walker approached Appellant's wife, also a CO at WCCW, and told her
5 about the relationship. They showed her a gold charm, personal cards and letters, and Tarot cards
6 that they said Appellant had given Ryan. Bales and Walker were subsequently disciplined for
7 withholding information during the investigation.

8
9 2.16 Bales and Walker were upset that Appellant and Ryan did not tell the truth. Walker spoke
10 with Mr. Baxter and told him that Appellant told her he cared for Ryan and had written to her using
11 the name "Adam." Walker also said that Appellant shared personal information with her including
12 that he and another CO were drinking buddies and that they lived next door to each other.

13
14 2.17 On September 13, 2001, an Employee Conduct Report was initiated against Appellant.
15 Daniel Fitzpatrick, Correctional Unit Supervisor, completed the ECR investigation on October 3,
16 2001. The ECR and supporting documentation was forwarded to Superintendent Stewart. After
17 receiving Mr. Fitzpatrick' report, Ms. Stewart asked him to do a supplemental investigation to
18 ensure that the information presented was accurate and complete.

19
20 2.18 Following the investigation, Ms. Stewart met with Appellant and his representative on
21 November 2, 2001. She found that Appellant provided her with inconsistent information and that
22 his responses to the charges and reasons for his actions did not make sense. Following the meeting,
23 Ms. Stewart concluded that misconduct occurred. Ms. Stewart determined that Appellant neglected
24 his duty when he engaged in an inappropriate relationship with Ryan, gave cigarettes and other
25 contraband to inmates, and shared personal information with inmates. Ms. Stewart felt that

1 Appellant was being dishonest and that in spite of warnings about the rumors, he continued to find
2 reasons to be with Ryan. Ms. Stewart concluded that Appellant disregarded institution policies,
3 brought contraband into the institution, compromised his safety and the safety of the institution and
4 showed favoritism to inmates. She also felt that Appellant destroyed his credibility and his ability
5 to enforce the institution's rules and to act as a role model to inmates and other staff. Ms. Stewart
6 concluded that dismissal was the appropriate sanction.

7
8 2.19 Throughout the disciplinary investigation and during the hearing before the Board, Ryan
9 stated consistently that her boyfriend's name was Adam. One of the personal notes in Ryan's
10 possession was a calendar page torn from a desk calendar. Ryan testified that the calendar page
11 was mailed to her from Adam and that he wrote the personal notation on the calendar page.
12 Appellant also testified that he took the calendar page and wrote the personal notation on the
13 calendar page. We find that a preponderance of the credible evidence establishes that Appellant
14 used the pseudonym "Adam" when corresponding with Ryan. We also find that a preponderance of
15 the credible evidence establishes that Appellant gave contraband to inmates, shared personal
16 information with inmates, and engaged in an inappropriate personal relationship with Ryan.

17
18 2.20 DOC Policy 801.005 addresses employee relationships with offenders and states, in relevant
19 part:

20 Professional relationships with offenders and their family members, and close
21 personal associates must be conducted in a manner consistent with state law, prudent
22 correctional practice, and Department policies. Employees shall use caution when
23 dealing with offenders and/or their family members or associates and shall be
24 mindful of the appearance of improper association. Employees are expected to
25 manage their interactions with these individuals in a professional manner at all times
26 and to treat them with dignity and respect.

1. Favoritism/Professionalism

1 "smoking gun" and proves that Appellant was "Adam." Respondent further asserts that, with the
2 exception of Ryan, the inmates' testimony was consistent and they had no motive to lie.
3 Respondent argues that Appellant engaged in a pattern of inappropriate behavior with inmates, his
4 behavior constituted a neglect of duty and violation of policy, and his behavior rose to the level of
5 gross misconduct. Respondent contends that Appellant lost his credibility at the institution and his
6 behavior could not be tolerated. Therefore, Respondent asserts that dismissal was the appropriate
7 disciplinary sanction.

8
9 3.2 Appellant asserts that Ryan wanted to feel important among other inmates so she concocted
10 a story that snowballed and resulted in the disciplinary action against Appellant. Appellant asserts
11 that Ryan had a motive to withhold information about her acquisition of the items because if she
12 admitted that she stole the items, she would have been placed in segregation. Appellant argues that
13 his discipline was based on rumor and innuendo and that the matter could have been resolved if
14 Ryan had told the truth. Appellant argues that no witnesses saw him engaged in inappropriate
15 sexual conduct with Ryan and that no witnesses saw him give her personal gifts. Appellant further
16 argues that the inmate witnesses were threatened to testify in Respondent's favor. Appellant asserts
17 that he should not receive formal discipline for his admitted behavior of giving inmates cigarettes,
18 candy and coffee because giving these items to inmates is a common practice at WCCW and is a
19 practice that is allowed at other DOC facilities. Appellant argues that Respondent failed to meet its
20 burden of proof and that the disciplinary sanction should be reversed.

21 22 **IV. CONCLUSIONS OF LAW**

23 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter
24 herein.

1 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting
2 the charges upon which the action was initiated by proving by a preponderance of the credible
3 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the
4 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of
5 Corrections, PAB No. D82-084 (1983).

6
7 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her
8 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't
9 of Social & Health Services, PAB No. D86-119 (1987).

10
11 4.4 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to
12 carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989). Flagrant
13 misbehavior occurs when an employee evinces willful or wanton disregard of his/her employer's
14 interest or standards of expected behavior.

15
16 4.5 Willful violation of published employing agency or institution or Personnel Resources
17 Board rules or regulations is established by facts showing the existence and publication of the rules
18 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the
19 rules or regulations. A willful violation presumes a deliberate act. Skaalheim v. Dep't of Social &
20 Health Services, PAB No. D93-053 (1994).

21
22 4.6 Respondent has met its burden of proof that Appellant neglected his duty, willfully violated
23 agency policy, and that his actions rose to the level of gross misconduct. A preponderance of the
24 credible evidence establishes that Appellant neglected his duty when he engaged in a personal
25 relationship with Ryan, gave Ryan personal gifts and cigarettes, shared personal information with
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1 inmates, and gave inmates food and cigarettes. Appellant's actions were contrary to agency policies
2 and expectations. Appellant's behavior compromised his ability to function as a CO, violated the
3 trust placed in him by the institution, and therefore, rose to the level of gross misconduct.
4

5 4.7 Under the totality of the proven facts and circumstances, Respondent has met its burden of
6 proving the charges in the disciplinary letter. In light of the egregious nature of Appellant's
7 misconduct, Respondent has established that the disciplinary sanction of dismissal is appropriate.
8 Therefore, the appeal should be denied.
9

10 **V. ORDER**

11 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Darin Stone is denied.

12 DATED this _____ day of _____, 2002.
13

14 WASHINGTON STATE PERSONNEL APPEALS BOARD

15 _____
16 Walter T. Hubbard, Chair
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18 _____
19 René Ewing, Member
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